

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Romeo Anthony Brown,)	Case No. 2:18-cv-01276-DCC
)	
Petitioner,)	
)	
v.)	ORDER
)	
Warden Lee Correctional Institution,)	
)	
Respondent.)	
_____)	

Petitioner, proceeding pro se, is seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), (D.S.C.), this matter was referred to United States Magistrate Judge Mary Gordon Baker for pre-trial proceedings and a Report and Recommendation ("Report"). On November 30, 2018, Respondent filed a Motion for Summary Judgment. ECF No. 26. Petitioner filed a Motion to Amend or Correct the Petition and a Motion to Stay on December 11, 2018. ECF Nos. 30, 31. He later filed a Response in Opposition to the Motion for Summary Judgment. ECF No. 38. Respondent filed a Response in Opposition to Petitioner's Motions. ECF No. 37. On February 13, 2019, the Magistrate Judge issued a Report only with respect to Petitioner's Motions to Amend and to Stay recommending that the Motions be denied. ECF No. 40. Petitioner filed objections to the Report, and Respondent filed a Reply. ECF Nos. 42, 43.

APPLICABLE LAW AND ANALYSIS

Standard of Review

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

Discussion

Petitioner’s objections to the Report largely restate the arguments he made in his Motions. Briefly, he contends that this case should be stayed to allow him to return to state court in order to present all grounds raised in his petition to the PCR court. As explained in more detail by the Magistrate Judge, a stay would be appropriate if the Petition at issue were “mixed,” that is, if some of Petitioner’s claims were exhausted and

some were unexhausted. Here, Petitioner has exhausted his available state remedies. It appears that some of Petitioner's claims may be procedurally barred; however, that does not entitle him to a stay of the present action. Petitioner has failed to demonstrate any reason that he should be allowed to amend his Petition or that this case should be stayed.

CONCLUSION

The Court adopts the Magistrate Judge's Report and Recommendation [40]. Petitioner's Motions to Amend or Correct the Petition and to Stay [30, 31] are **DENIED**. The Motion for Summary Judgment remains pending and this case remains open.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.
United States District Judge

April 23, 2019
Spartanburg, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.